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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,655	06/26/2003	Charles H. Bianchi	2797.1002-007	4692

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FOGG & POWERS LLC
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MINNEAPOLIS, MN 55402

EXAMINER

O CONNOR, BRIAN T

ART UNIT	PAPER NUMBER
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2616

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/18/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/606,655	Applicant(s) BIANCHI ET AL.	
	Examiner Brian T. O'Connor	Art Unit 2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>12/22/2003</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The abstract of the disclosure is objected to because the abstract contains more than 150 words; according to 37 CFR 1.72 (b) the abstract may not exceed 150 words in length. Correction is required. See MPEP § 608.01(b).

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-9 and 11-19 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-9 of U.S. 6,587,479.

With respect to claim 1, the scope of the pending claim 1 in the present application is simply broadened by replacing "local area network" with "metropolitan area network" on lines 1, 3, 8, 9, and 15 of claim 1 in U.S. 6,587,479. It is well settled

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that broadening the scope of claims would have been obvious to one of ordinary skill in the art in view of the narrower issued claim. In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982) and In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993).

With respect to claim 2, the pending claim 2 is the same as claim 2 in U.S. 6,587,479.

With respect to claim 3, the scope of the pending claim 3 in the present application is simply broadened by replacing "local area network" with "metropolitan area network" on line 4 of claim 3 in U.S. 6,587,479. It is well settled that broadening the scope of claims would have been obvious to one of ordinary skill in the art in view of the narrower issued claim. In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982) and In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993).

With respect to claim 4, the scope of the pending claim 4 in the present application is simply broadened by replacing "local area network" with "metropolitan area network" on lines 5, 7, and 8 of claim 4 in U.S. 6,587,479. It is well settled that broadening the scope of claims would have been obvious to one of ordinary skill in the art in view of the narrower issued claim. In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982) and In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993).

With respect to claim 5, the pending claim 5 is the same as claim 5 in U.S. 6,587,479.

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With respect to claim 6, the pending claim 6 is the same as claim 6 in U.S. 6,587,479.

With respect to claim 7, the pending claim 7 is the same as claim 7 in U.S. 6,587,479.

With respect to claim 8, the pending claim 8 is the same as claim 8 in U.S. 6,587,479.

With respect to claim 9, the pending claim 9 is the same as claim 9 in U.S. 6,587,479.

With respect to claim 11, the scope of the pending claim 11 in the present application is simply broadened by replacing “**local** area network” with “**mobile broadband wireless** area network” on lines 1, 3, 8, 9, and 14-15 of claim 1 in U.S. 6,587,479. It is well settled that broadening the scope of claims would have been obvious to one of ordinary skill in the art in view of the narrower issued claim. In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982) and In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993).

With respect to claim 12, the pending claim 12 is the same as claim 2 in U.S. 6,587,479.

With respect to claim 13, the scope of the pending claim 13 in the present application is simply broadened by replacing “**local** area network” with “**mobile broadband wireless** area network” on line 4 of claim 3 in U.S. 6,587,479. It is well settled that broadening the scope of claims would have been obvious to one of ordinary skill in the art in view of the narrower issued claim. In re Van Ornum, 686 F.2d 937, 214

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USPQ 761 (CCPA 1982) and *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993).

With respect to claim 14, the scope of the pending claim 14 in the present application is simply broadened by replacing "local area network" with "mobile broadband wireless area network" on lines 5, 7, and 8 of claim 4 in U.S. 6,587,479. It is well settled that broadening the scope of claims would have been obvious to one of ordinary skill in the art in view of the narrower issued claim. *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982) and *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993).

With respect to claim 15, the pending claim 15 is the same as claim 5 in U.S. 6,587,479.

With respect to claim 16, the pending claim 16 is the same as claim 6 in U.S. 6,587,479.

With respect to claim 17, the pending claim 17 is the same as claim 7 in U.S. 6,587,479.

With respect to claim 18, the pending claim 18 is the same as claim 8 in U.S. 6,587,479.

With respect to claim 19, the pending claim 19 is the same as claim 9 in U.S. 6,587,479.

4. Claim 10 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,587,479 in view of

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Microwave Journal (Microwave Journal, "IEEE Standard 802.16 Sets Stage for Growth of Metropolitan Area Networks", February 2002, pg 51; hereafter Microwave2002).

U.S. 6,587,479 fails to disclose the IEEE 802.16 standard for wireless metropolitan area networks.

Microwave2002 discloses the approval and release of IEEE Standard 802.16 for wireless metropolitan networks (pg 51, second paragraph, right column).

Microwave2002 realizes the benefit of greater development and efficient use by using the IEEE Standard 802.16 for wireless metropolitan are networks (pg 51, second paragraph, third paragraph, fourth paragraph, right column). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to use the method of Microwave2002 with the U.S. 6,587,479 patent.

5. Claim 20 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,587,479 in view of Microwave Journal (Microwave Journal, "IEEE Standard 802.20 Will Set Data Rates Above 1 Mbps for Mobile Users", April 2003, pg 57; hereafter Microwave2003).

U.S. 6,587,479 fails to disclose the IEEE 802.20 standard for mobile broadband wireless networks.

Microwave2003 discloses the approval and release of IEEE Standard 802.20 for mobile broadband wireless networks (pg 57, second paragraph, left column).

Microwave2003 realizes the benefit of greater transmission speed by using the IEEE Standard 802.20 for wireless metropolitan are networks (pg 57, second

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paragraph, third paragraph, left column). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to use the method of Microwave2003 with the U.S. 6,587,479 patent.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian T. O'Connor whose telephone number is 571-270-1081. The examiner can normally be reached on 9:00AM-6:30PM, M-F, 1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hassan Kizou can be reached on 571-272-3088. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Brian T. O'Connor
April 6, 2007


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